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SEP 03 1998

CONCORD, N.H.

1953

May 12

Honorable Edith P. Atkins
House of Representatives
Concord, New Hampshire

Dear Mrs. Atkins:

I am unable to advise you that H.J.Res. 23 in its present form is unconstitutional. It clearly would be were it to carry any compulsory weight, but its present form is precatory and it in fact is completely without legal effect on subsequent legislatures.

Constitutional separation of powers and principles of non-delegation applicable thereto prohibit abdication of legislative responsibility through the device of delegation of law-making authority to the voting public. In 1831, then Chief Justice Doe of our Supreme Court, in a lengthy, well-reasoned opinion, pointed out that

"The legislature had no power to make such submission, nor had the people the power to bind each other by acting upon it. They voluntarily surrendered that power when they adopted the constitution. The government of this state is democratic; but it is a representative democracy, and in passing general laws the people act only through their representatives in the legislature . . .".
State v. Egan, 61 N.H. 264, 326.

By your letter you suggest that while H.J.Res. 23 has no binding effect on subsequent legislatures, it nevertheless, for practical purposes, will carry great weight. This may be true; but in so far as the resolution contemplates taking the sense of the general public but is a mere nullity legislatively speaking, it is within legislative power.

The resolution is not a referendum and its language expressly provides that the results of the public expression of opinion shall be "For the information of the legislature" only.

C O P Y

Honorable Edith P. Atkins

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I suppose Griswold's words of two decades ago are still applicable -- that death and taxes are certain. Thus, if we must have taxes, it is not unconstitutional for the legislature to ask the voting public what flavor of medicine they would prefer. For the majority view, see Annotation, 76 A.L.R. 1053, where our State is cited with the weight of authority.

The Connecticut proposals are not in point for in that state it was proposed to pass controversial issues to the people for final settlement. There is nothing of finality in H.J. Res. 23.

With every good wish,

Sincerely,

Louis G. Wyman
Attorney General

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